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The Frail Old Age of the Socratic Method

Carl E. Schneider
University of Michigan Law School, carlschn@umich.edu

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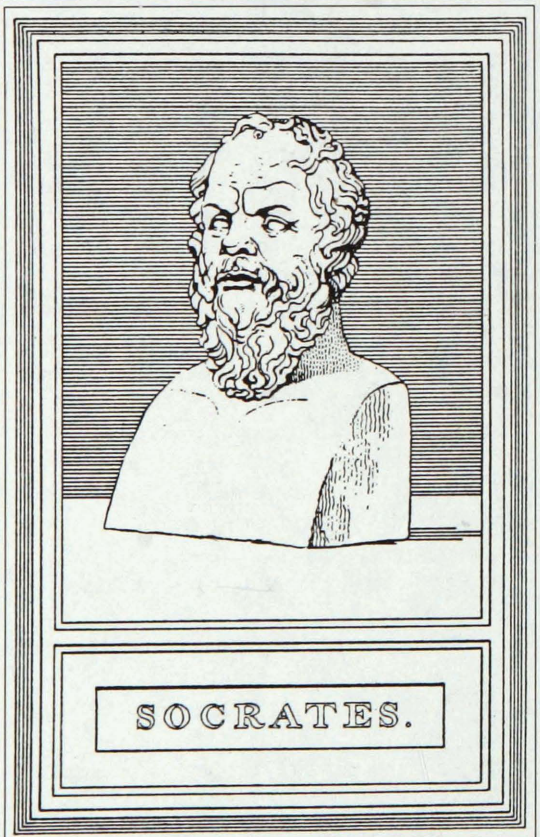
THE *frail old age* OF THE SOCRATIC METHOD

—BY CARL E. SCHNEIDER



ARTWORK FROM *SOCRATES*, BY N. MITCHINSON AND R.H. S. CROSSMAN (HARRISBURG, PENNSYLVANIA: THE TELEGRAPH PRESS, 1938).

We are gathered here to honor you for your seriousness about and success in your legal education. It is fitting and proper that we should do this, for law is a learned profession, and mastery of it is a critical and continuing duty, as well, I hope, as a pleasure. But this convocation is also, as Holmes put it, a time when the Law School "becomes conscious of itself and its meaning."[1] I want to combine these two purposes by discussing with you our common enterprise of education for a learned profession. Specifically, I want to consider a distinctive feature of legal education, the Socratic method.

My thesis is this: The Socratic method is not dead. Perhaps it is not even dying. But it has entered a frail and faltering old age. Fewer and fewer classes are taught Socratically. And when they are, it is often in ways that effectively limit the method's range, so that, for example, only volunteers or students warned in advance are called on.[2] I want to ask how this change has come about and whether it matters.

NEW SUBSTANCE, NEW STYLE

As you might suppose, two groups have contributed to the present infirmity of the Socratic method — the faculty and the students. Let us begin with the faculty's role.

Many professors use the Socratic method less than their predecessors because they are teaching a different subject. The Socratic method arose when the law's doctrines — especially the common law's doctrines — dominated not just the work of courts and legislatures, but also law schools. Today, doctrine has lost some of its dignity. Our conventional wisdom is that the best preparation a law school like ours can give its students is one that does more than train them in the substance of specific legal doctrines and the traditional techniques of doctrinal analysis. It also should attempt to teach students to appreciate the larger principles that underlie legal doctrines, to grasp the non-doctrinal ways of reasoning the law employs, and to understand law as a social actor.

In consequence, law professors today are likelier than their predecessors to draw on disciplines other than law — disciplines like economics, psychology, and sociology. For one thing, lawyers, legislators, and judges now speak those languages. Woe betide the antitrust lawyer who is ignorant of economics, the mergers-and-acquisitions lawyer who knows no corporate finance, or the family lawyer who is a stranger to psychology. For another thing, the social sciences and the humanities provide systematic ways of analyzing the law's behavior. Thus the contemporary law professor moves beyond legal doctrine because doctrine itself has overflowed its traditional boundaries and because legal education is thought to demand a grasp of "why" as well as "how."

This change in substance animates a change in pedagogy: It propels teachers away from the Socratic method and toward the lecture. In principle, perhaps it need not and even ought not. But in practice, I think it does. The trend toward a more interdisciplinary curriculum means a more interdisciplinary professoriate. Many of my colleagues have Ph.D.s as well as J.D.s. They were thus trained in fields which historically have relied primarily on the lecture, not the Socratic dialogue, and they find it natural to follow suit.

The inclusion of "law and" subjects in the curriculum conduces toward lecturing for another reason. Because "law and" disciplines have their own substantial bodies of knowledge, law students often need to acquire a grounding in them before discussion becomes feasible. And because "law and" subjects have their own esoteric forms of analysis, students often lack the skill to engage in Socratic discussion in those fields. For both reasons, lectures supplant dialogue.

The faculty resist the Socratic method for yet another kind of reason. Law teaching is now peopled by members of a generation that first encountered the Socratic method when it was practiced more sternly than it is now. They, of all generations, most vehemently rejected Socraticism as competitive and hierarchical, brutal and vicious. These onetime students, now professors, may have moderated their views somewhat, but I think they are still uneasy with any method of instruction that places public demands on students and that seems to invite public distinctions between them.

Finally, the faculty incentive structure of law schools has changed in ways that diminish the appeal of the Socratic

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1. Oliver Wendell Holmes, *Brown University Commencement 1897*, in *Collected Legal papers* 164, 164 (Harcourt, Brace, 1920).
2. I find some confirmation for this conclusion, which is based on impressions I have formed over the last twenty years in law schools, in Thomas L. Shaffer & Robert S. Redmount, *Legal Education: The Classroom Experience*, 52 Notre Dame Lawyer 190, 199 (1976), which reports the results of a modest empirical study that concludes that "lecture is almost a universal teaching method in law school."

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method. Traditionally, the ethos of law schools has been that teaching is a truly cherished part of a professor's job. I doubt that anywhere in the university is teaching taken more seriously or more consistently done skillfully. Law professors commonly spend more time preparing for class, invest more energy in class, and devote more time to grading exams than the generality of professors in American universities.

However, this ethos is under pressure. Once you could be a respectable law professor without writing overmuch. Today, tenure is a good deal harder to come by and demands more writing. And there is a fiercer expectation that you will continue to publish after tenure. This is not just a local condition. It is part of the national competition of law schools. A school that wants to be esteemed must have a prolific faculty. Were this not such a faculty, you wouldn't want to come here.

But time for writing has to come from some place, and teaching is the obvious source. Lecturing is the obvious way of honorably borrowing time from teaching. The Socratic method continually prods professors to prepare for each class. But once you have written a lecture, you have only to browse through your notes before class, making whatever adjustments developments in the law may require. And because lecturing is, over the years, less stimulating for the professor than class discussion, it is, over the years, likely to evoke less intense effort.

THE STUDENTS' SIDE

Pressure to abandon or dilute the Socratic method comes from students as well as faculty. The Socratic method, after all, relies at least as much on students as on teachers. If students have not read and thought meticulously about a subject, a rewarding discussion of it is most unlikely. However, in the years I have been a student and professor here, the customary standard of preparation has become markedly less onerous.

The reasons for this begin with the job market. That incubus now dominates life even in a school far enough from a large city that relatively few students work during the term. Interviews for summer and permanent jobs, fly-backs, and the joys and tears of discussing them swallow up time and energy that was once devoted to class. This trend persists despite our graduates' triumphant success in finding desirable jobs. Indeed, exactly because our students have such fine job prospects, they begin to suspect in their second year that their performance in class may not affect their careers crucially. Further, the trend persists in bad times and good. The bad times create alarm that leads people to interview more. The good times give people more chances to savor the delights of being courted.

In addition, our incentive structure does not greatly encourage strong class preparation. For example, many classes are so big that, even if you want to, you can't talk very often or very long. The pass-fail option and the late deadline for exercising it dull the spur that grades provide to do the reading on time. For that matter, few professors directly reward good class performance with higher grades. Finally, many students discover that they can do tolerably well on final exams even if they postpone most of their studying until the end of the semester.

Finally, many students prefer lectures to the Socratic method because they conceive of their task only as learning the substance of the law. The most frequent comment I hear from students who come to see me about an exam is "I don't see why I didn't do better; I'm sure I really knew the material." When the goal of mastering legal analysis is thus scanted, the Socratic method can seem merely perverse, obscuring what ought to be

clarified, complicating what ought to be simplified, questioning what ought to be confirmed. Professors hear this view in talking with students, in the student newspaper, and in course evaluations, and it does not go unnoticed.

There are, then, both faculty and student disincentives to the Socratic method. What is more, they continually reinforce each other. As the faculty lectures more and calls on students less, students quite understandably respond by preparing less for class. As students come to class less thoroughly prepared, the faculty quite understandably adapts by lecturing more.

SICK BUT WORTH SAVING

Well, so what? Does it matter that we're using the Socratic method less and enjoying it less? The Socratic method was always better at some things than others. It was always open to the objection that it is a clumsy way of communicating information and ideas. Students, of course, must learn some of the law's substance, and insofar as class is intended to help them do so, the Socratic method may not always be optimal. Further, I have already suggested some reasons the Socratic method may seem less attractive in a world in which law teaching is less doctrinal and more interdisciplinary. Finally, some professors enjoy the Socratic method more than others, and some are better at it than others. For all these reasons, the Socratic method is not apt for all times, places, people, and tasks.

Nevertheless, as you may have gathered, I think the Socratic method worth saving. Let me suggest several reasons. I will start with a crude, but not foolish, one. Dr. Johnson once said, "Depend upon it, Sir, when a man knows he is to be hanged in a fortnight, it concentrates his mind wonderfully." When a student knows that he may be called on in class the next day, he has a wonderful reason to study. When a student knows that she may be called on the next minute, she has a wonderful reason to stay engaged and intent during the long and — I admit it — sometimes wearying hours of class.

To be sure, it is here that the criticism I described earlier — that the Socratic method invites professorial savagery — enters in. I freely stipulate that that way of teaching gives the professor more opportunity and scope for belligerence, sarcasm, and derision than lecturing. And some of my friends who are slightly older than I say that as students they encountered professors who seized the opportunity and relished its scope. But my sense is that times have changed, and that such unpleasantness is inflicted far less frequently and primarily by inadvertence. At least I cannot recall such an incident when I was a student here.

THE RIGHT TOOL FOR OUR TASK

My next point in favor of the Socratic method is that, while it may not be ideal for the exposition of factual material, or even for helping students straighten out complicated doctrines, work of that sort should not be the main business of a law school class. For one thing, such ideas are most efficiently communicated and assimilated through texts. For another, it is the student's very labor of grappling with case and statute, with precedent and doctrine, that is the best teacher, which is why professors are always urging students to write their own course outlines. Law school classes, then, should be primarily devoted to work that can not be done so well elsewhere.

What cannot be done so well elsewhere is what we claim as our principal task — teaching students to think like lawyers. I believe the Socratic method is, despite its limits, generally a good, and even brilliant, way of doing so. It shines at helping students learn to read and criticize the standard sources of legal doctrine (for, after all, doctrine is hardly dead, even though it may be understood more broadly) and to detect and dissect the legal problems, public questions, and jurisprudential issues they present. The Socratic method works by offering students an opportunity that (given the size of law school classes) they have all too rarely — the chance to practice legal analysis and to receive the personal attention and assistance of a professor. It invites students to study selected cases, problems, or issues intensively and to construe them in class under the guidance of an experienced analyst. The professor offers examples of the right kinds of questions to ask, and demonstrates by more questions the weaknesses of the wrong kinds of answers and the advantages of the right kinds. This demanding regimen can also inculcate a sense of the demanding standards of attention, care, and rigor which have characterized the best legal reasoning. The process is repeated over and over again until students become experienced, skilled, and confident. The principle is that practice makes perfect.

Furthermore, whatever the limits of the Socratic method, they are modest next to the drawbacks of the lecture method. At least in a field that is not changing rapidly, lectures are open to one crushing question — if you have something to tell us, why don't you write it down and let us study it carefully and conveniently? I remember asking that question in my freshman year in college, when one of the assigned books in my Government 1 class comprised the lectures the previous Gov 1 professor had given when he taught the course, and I still think it is a good question.

More positively, the Socratic method on the whole conduces to better teaching than the lecture method. I first began to believe this when I was a law student at Michigan and found class more inspiriting and rewarding than in college. Today I remember vividly only two of my undergraduate lecture courses but many of my law courses. The difference is not

WHAT CANNOT BE DONE SO WELL ELSEWHERE IS TEACHING STUDENTS TO THINK LIKE LAWYERS. I BELIEVE THE SOCRATIC METHOD IS, DESPITE ITS LIMITS, GENERALLY A GOOD, AND EVEN BRILLIANT, WAY OF DOING SO.

due to the relative quality of the schools, since my undergraduate institution was as eminent as this one. Rather, I think (perhaps controversially) it is easier to teach a good Socratic class than to lecture well. A good lecture is a thing of beauty and a joy forever, but it is painfully hard to craft. Leading a good discussion certainly requires considerable preparation beforehand, considerable attention at the time, and considerable evaluation afterward. But because it asks students to learn by doing, because it corrects errors and rewards insights, because it challenges students to react and reflect, because it more deeply engages the minds of the students, and because it draws them into the work of learning and thus induces them to learn more richly and deeply, it commonly repays — and thus invites — pedagogical effort better than lecturing.

I have been describing the forces that impel us away from the Socratic method and trying to suggest why we should resist them. Every summer, I learn a little lesson about what lies at the bottom of the path we are treading when I teach a course in American law for German law students. There I am invariably assailed by complaints about German legal education. These complaints sound odd to an American. In German law schools, I am bitterly told, no professor ever calls on a student. No student need attend class. No grades are given. The curriculum need not be completed in any set number of years. It's even free.

Following German academic tradition, all courses are taught by the lecture method. If my German students are right, these lectures are commonly not just uninspired. Sometimes the professor simply reads from a book he has published, or even sends his assistant to do so. Students rarely attend class, and before taking the single exam which evaluates their entire law-school performance, they attend commercial review courses. They detest law school, and their professors detest teaching.

Of course, we are a long way from this sorry state. On the contrary, we continue to enjoy what may be the best system of legal education in the world. And whatever the method of instruction, the quality of your education will finally depend on you. As Holmes said of the time when he embarked on the ocean of the law,

> There were few of the charts and lights for which one longed . . . . One found oneself plunged in a thick fog of details — in a black and frozen night, in which there were no flowers, no spring, no easy joys. Voices of authority warned that in the crush of that ice any craft might sink. One heard Burke saying that law sharpens the mind by narrowing it. One heard in Thackeray of a lawyer bending all the powers of a great mind to a mean profession. One saw that artists and poets shrank from it as from an alien world. One doubted oneself how it could be worthy of the interest of an intelligent mind. And yet one said to oneself, law is human — it is a part of man, and of one world with all the rest. There must be a drift, if one will go prepared and have patience, which will bring one out to daylight and a worthy end.[3]

Ultimately, I believe the Socratic method is preferable to the lecture method because it is easier to learn navigation by practicing under expert guidance than by studying a sailing manual. But ultimately, you have to steer your own craft, to educate yourself. However much guidance and stimulation you receive in school, you can only learn the law by the prolonged and solitary study and the kinds of extra-curricular activities for which you are being recognized today. And part of what it means to enter a learned profession is that your education only begins with law school, that you will continue to teach yourself to understand your calling more deeply, to serve your clients more wisely, and to wield your profession's influence more justly. Your presence here today testifies how far you have already come in doing so. I salute you with pleasure in the past and hope for the future.

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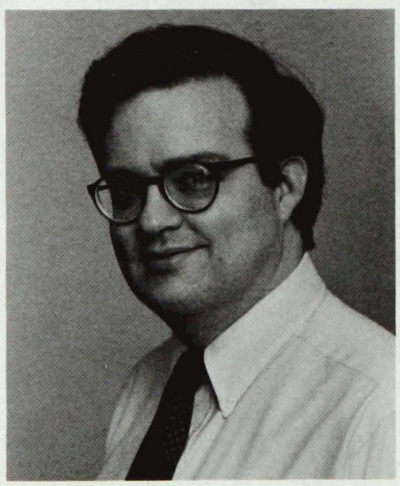

Professor Carl Schneider graduated from the U-M Law School in 1979. He writes and teaches primarily on the topics of law and medicine, family law, and constitutional law.

3. Oliver Wendell Holmes, *Brown University — Commencement 1897*, in *Collected Legal papers* 164 - 65 (Harcourt, Brace, 1920).